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In re Application of
WILBERT et al.
Serial No.: 09/601,013
PCT No.: PCT/DE99/00369
Int. Filing Date: 17 February 1999
Priority Date: 18 February 1998
Attorney's Docket No.: None
For: DEVICE FOR TESTING THE
ELECTROMAGNETIC COMPATIBILITY OF SYSTEMS
HAVING LARGE DIMENSIONS

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: DECISION ON PETITION
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: UNDER 37 CFR 1.137(b)
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This is in response to applicant's petition to revive under 37 CFR 1.137(b) filed in the United States Patent and Trademark Office (USPTO) on 26 July 2001 in the above-captioned application.

BACKGROUND

On 17 February 1999, applicant filed international application No. PCT/DE99/00369 which claimed priority of an earlier German application filed 18 February 1998. A copy of the international application was communicated to the United States by the International Bureau on 26 August 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 06 September 1999 prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 August 2000.

On 26 July 2000, applicant filed a Transmittal Letter requesting entry into the national stage in the United States of America under 35 U.S.C. § 371 along with credit card payment of \$840 for the basic national fee.

On 06 September 2000, a Notification of Missing Requirements was mailed to applicant indicating that an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b) and a surcharge for filing the oath or declaration after the thirty month period was required.

On 12 June 2001, a Notification of Abandonment was mailed to applicant indicating that the application was abandoned for failure to respond to the 06 September 2000 Notification of Missing Requirements.

On 03 July 2001, applicant filed the instant petition to revive (Form PTO/SB/64) along with the declaration of the inventors and authorization to charge \$130 to applicant's credit card.

DISCUSSION

A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response unless it has been previously submitted, (2) the fee required by law for revival of an unintentionally abandoned application (1.17(m)), and (3) a statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional". In this instance, the fee required by law for revival of an unintentionally abandoned application is \$1240, or \$620 for a small entity.

Applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies item (3) above.

With regard to items (1) and (2), applicant has submitted a declaration prepared for and signed by the first inventor only. An oath or declaration must be provided by all applicant/inventors, that is, Jan Wilbert and Harald Schwarz.

Applicant submitted authorization to charge his credit card; however, applicant did not indicate payment of the petition fee or the surcharge. The credit card authorization form submitted by applicant indicated only an amount of \$130 to be charged without explanation of which fees applicant was making payment upon. The surcharge for the declaration is \$130 but there was no indication that the authorization to charge \$130 should be applied in payment of this surcharge. Furthermore, there was no indication that the petition fee of \$1240 should be charged. Without applicant's express authorization to charge a specific amount for a specific purpose, the USPTO cannot charge applicant's account for any fees due. Thus, applicant did not satisfy items (1) and (2) above.

A review of the application file reveals that the required petition fee of \$1240 and \$130 surcharge have not been paid and thus, the requirements of 37 CFR 1.137(b) have not been satisfied. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is **DISMISSED**.

For applicant's convenience, two copies of the Credit Card Payment Form are enclosed. Applicant is advised to submit separate authorizations for each fee paid, specifying the amount to be charged and its purpose.

Should applicant be a small entity, the petition to revive fee for a small entity is \$620 and the surcharge is \$65. See 37 CFR 1.27 and Sections 509.02 and 509.03 of the Manual of Patent Examining Procedure (MPEP) for information on small entity status.

Because applicant has filed the application *pro se*, it is noted that while an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicants are advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skillful preparation and prosecution. The Office cannot aid in selecting an attorney or agent. Applicants are advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Registered patent attorneys and agents are also listed on the Internet at www.uspto.gov.

CONCLUSION

For the reasons discussed above, the petition to revive under 37 CFR 1.137(b) is **DISMISSED WITHOUT PREJUDICE**. The application remains **ABANDONED**.

Any request for reconsideration on the merits of this decision must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b). No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Cynthia M. Kratz
Attorney Advisor
PCT Legal Office
Telephone: (703) 306-5467

Enclosure: Credit Card Payment Forms (2 copies)

United States Patent & Trademark Office

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State:

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